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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: CEFALI, EUGENIO
Serial No.: 08/962,027
Filing Date: 13 October 1997
Docket Number: 50454-56103USCIP1
Title: INTERMEDIATE RELEASE NICOTINIC ACID COMPOSITIONS
FOR TREATING HYPERLIPIDEMIA HAVING UNIQUE CMAX,
TMAX AND AUC BIOPHARMACEUTICAL CHARACTERISTICS

COMMISSIONER FOR PATENTS

P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO OFFICE ACTION

Dear Sir:

In response to the office Action mailed on 18 June 2003, applicants hereby submit the following documents for filing in the above-referenced patent application:

1. Terminal Disclaimer as outlined on page 2, paragraph 3 of said Office Action;
2. Return Postcard.

Please charge our deposit account 50-2543 the \$110.00 fee as specified in 37 C.F.R. §1.20(d). A copy of this document is enclosed herewith for this purpose. No additional fees are believed to be due at this time. However, please charge any additional fees or refund any overpayments to our Deposit Account No. 50-2543.

If there are any questions, please call the undersigned at the telephone number indicated below.

Respectfully submitted,

Karen J. Messick, Esq.
Registration Number 46,256
Attorney for Applicants

Kos Pharmaceuticals, Inc.
1001 Brickell Bay Drive
25th Floor
Miami, FL 33131
Tel.: 305.523.3663
Fax: 305.377.4076

Date: 10/9/03

CERTIFICATION UNDER 37 C.F.R., §1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date indicated below.

10/9/03
Date

Jared Silberhorn



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TERMINAL DISCLAIMER

Sir:

This is in response to the Office Action mailed on 18 June 2003.

I, Karen J. Messick, Esq., Registration Number 46,256 declare that I am an attorney of record in this application and that I am authorized to execute a terminal disclaimer in behalf for Kos Pharmaceuticals, Inc. (Kos).

That Kos is the assignee of the entire right, title and interest in, to and under U.S. Patent Application Serial Number 08/962,027, filed 31 October 1997 ("the above-captioned application") by virtue of assignment from the inventor, which was recorded on 3 April 1998 on Reel 9080, Frame 0471;

That Kos is the assignee of the entire right, title and interest to and under U.S. Patent Number 6,406,715B1, issued 18 June 2000 from U.S. Application Number 08/962,423, filed 13 October 1997 by virtue of assignment from the inventor to Kos which was recorded on 13 November 2002 on Reel 013525, Frame 0665;

That Kos hereby disclaims the terminal part of any patent granted on the above-captioned application which would extend beyond the expiration date of the full statutory term of U.S. Patent 6,406,715B1, including any extension thereof; and

That Kos hereby agrees that any patent so granted on the above-captioned application shall be enforceable only for and during such period that the legal title to said patent shall be the same as the legal title to U.S. Patent Number 6,406,715B1, this agreement to run with any patent granted on the above-captioned application and to be binding upon the grantee, its successors or assigns.

No terminal part of any patent granted on the above-captioned application is disclaimed prior to the full statutory term (including any extension thereof) of U.S. Patent Number 6,406,715B1 in the event that said patent earlier expires for failure to pay a maintenance fee, is held unenforceable, is found invalid, is statutorily disclaimed in whole or is terminally disclaimed under 37 C.F.R. §1.321(a), has all claims canceled by a reexamination certificate, or is otherwise terminated prior to expiration of its full statutory term (including any extension thereof), except for the separation of legal title stated above.

In accordance with 37 C.F.R. §3.73, the undersigned states that evidentiary documents evidencing the chain of title from the original owner to the assignee have been reviewed and certifies that, to the best of her knowledge and belief, title is in the assignee seeking to take the action.

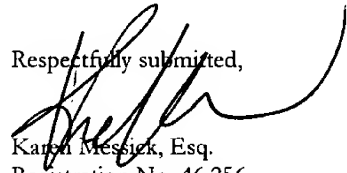
I hereby declare that all statements made herein of my own knowledge are true and that all statements made in information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine of imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Accordingly, it is respectfully requested that no double patenting rejection be issued.

Moreover, in view of the contemporaneous-filed Response and Amendment, and the instant Terminal Disclaimer, it is respectfully submitted that the present application is in condition for allowance.

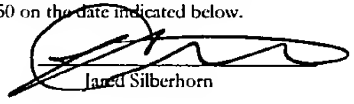
Therefore, reconsideration and withdrawal of all rejections and objections to the application and prompt issuance of a Notice of Allowance are respectfully requested.

Respectfully submitted,


Karen Messick, Esq.
Registration No. 46,256
Attorney for Applicants

Kos Pharmaceuticals, Inc.
1001 Brickell Bay Drive
25th Floor
Miami, FL 33131
Tel.: 305.523.3643
Fax: 305.377.4076

Date: 10/9/03

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<u>10/9/03</u> Date	 Jared Silberhorn